11–441 Sheriff—Powers and duties.

.020 Subsection (A)(2) provides that the sheriff has a mandatory duty to attend all courts (except justice and municipal courts) when an element of danger is anticipated and attendance is requested by the presiding judge, and obey lawful orders and directions issued by the judge.

Trombi v. Donahoe, ___ Ariz. ___, 222 P.3d 284, ¶¶ 3–6, 20 (Ct. App. 2009) (trial court had authority to order sheriff to have jail inmates present in court for morning calendar, and when sheriff failed to do so, trial court had authority to hold deputy sheriff in contempt).

12–120. Creation of court of appeals; court of record; composition; sessions.

.010 The Arizona Court of Appeals is a single court, and although it has a division 1 and a division 2, opinions are issued by three-judge panels; because the court has no authority to sit "en banc," it is incorrect to refer to an opinion from the court of appeals as a "Division One" opinion or a "Division Two" opinion.

State v. Patterson, 222 Ariz. 574, 218 P.3d 1031, ¶¶ 7–21 (Ct. App. 2009) (court held there is no rule requiring that, when trial court is confronted with conflicting opinions issued by panel in division one and panel in division two, it must follow opinion from geographical area within which trial court is located; instead, trial court should follow opinion that trial court concludes is most persuasive).

12–123 Jurisdiction and powers. (Superior Court.)

.010 The superior court has original and concurrent jurisdiction as conferred by the constitution, and concurrent jurisdiction with justices of the peace of misdemeanors where the penalty does not exceed a fine of $1,000 or imprisonment for 6 months, and has all powers necessary to issue all writs necessary to the complete exercise of its jurisdiction.

Trombi v. Donahoe, ___ Ariz. ___, 222 P.3d 284, ¶¶ 3–6, 18–21 (Ct. App. 2009) (trial court ordered sheriff to have jail inmates present in court for morning calendar, and when sheriff failed to do so, trial court held deputy sheriff in contempt; court held trial court had jurisdiction to entertain or decide orders to show cause for contempt cases).

12–861 Criminal contempt defined.

.010 A person, who wilfully disobeys a lawful writ, process, order, or judgment of a superior court by doing an act or thing therein or thereby forbidden, if the act or thing done also constitutes a criminal offense, shall be proceeded against for contempt as provided in §§ 12–862 and 12–863 and Rule 33 of the Arizona Rules of Criminal Procedure.

Trombi v. Donahoe, ___ Ariz. ___, 222 P.3d 284, ¶¶ 29–30 (Ct. App. 2009) (when sheriff failed to have jail inmates present in court for morning calendar, trial court held deputy sheriff in contempt, and ordered as sanction to pay money to defendants, attorneys, and jurors; court concluded that, to extent those contempts were not civil, they were criminal, and because trial court did not follow proper procedure for criminal contempt, those parts of the order were not proper).

12–864 Direct or constructive contempts.

.010 Contempts committed in the presence of the court or so near to the court that they obstruct the administration of justice, and contempts committed by failure to obey a lawful writ, process, order, judgment of the court, and all other contempts not specifically embraced within this Title 12, Chapter 7, article 4 may be punished in conformity to the practice and usage of the common law.

Trombi v. Donahoe, ___ Ariz. ___, 222 P.3d 284, ¶¶ 3–6, 18–21 (Ct. App. 2009) (trial court ordered sheriff to have jail inmates present in court for morning calendar, and when sheriff failed to do so, trial court held deputy sheriff in contempt; court held trial court had jurisdiction to entertain or decide orders to show cause for contempt cases).

.020 A contempt sanction is considered civil if it either coerces the defendant into compliance with the court's order, or compensates the complainant for losses sustained.

Trombi v. Donahoe, ___ Ariz. ___, 222 P.3d 284, ¶¶ 25–28 (Ct. App. 2009) (when sheriff failed to have jail inmates present in court for morning calendar, trial court held deputy sheriff in contempt, and ordered as sanction to pay money to defendants, attorneys, and jurors; those persons were not, however, complainants in the contempt proceedings, and deputy was not given opportunity to reduce or avoid those sanctions by future compliance, so that part of order was not proper).

13–103(B) Affirmative defenses—Definition.

.030 Affirmative defense does not include any defense that either denies an element of the offense charged or denies responsibility, including alibi, misidentification, or lack of intent.

State v. Edmisten, 220 Ariz. 517, 207 P.3d 770, ¶¶ 6–8 (Ct. App. 2009) (defendant's defense was he was involuntarily intoxicated because girlfriend had secretly slipped two Ecstasy pills into his drink; because defense of involuntary intoxication negates requisite mental state for criminal act, it both denies element of offense charged and denies responsibility, thus involuntary intoxication is not affirmative defense; state therefore has burden of disproving involuntary intoxication).

13–105(12) Definitions. (Dangerous instrument.)

.010 A "dangerous instrument" is anything that, under the circumstances that it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

State v. Fish, 222 Ariz. 109, 213 P.3d 258, ¶¶ 71–76 (Ct. App. 2009) (defendant killed victim, and claimed he acted in self-defense; court held trial court should have given instruction so that jurors could have determined whether or not **dogs** could be considered dangerous instruments).

13–105(40) Definitions. (Vehicle.)

.010 "Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, waterway, or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

State v. Streck, 221 Ariz. 306, 211 P.3d 1290, ¶¶ 3–8 (Ct. App. 2009) (defendant sold farm tractor belonging to victim; court concluded farm tractor is means of transportation for purposes of A.R.S. § 13–1814, theft of means of transportation).

13–108(A)(1) Territorial applicability—Jurisdiction—Element of the offense.

.020 Arizona has jurisdiction to try a defendant if the **result** of conduct constituting one or more elements of the charged offense occurred in Arizona, and the state must establish this beyond a reasonable doubt.

State v. Yegan, 223 Ariz. 213, 221 P.3d 1027, ¶¶ 5–14 (Ct. App. 2009) (while in California, defendant corresponded with "Erica" who was allegedly 14 years old; their chats included talk of sexual activities and innuendo; defendant eventually arranged to travel to Phoenix to meet with "Erica" in person so that they could "hang out"; when he arrived in Phoenix for the meeting, he was arrested and charged with luring minor for sexual exploitation; defendant contended Arizona did not have jurisdiction because all conduct constituting elements of charge occurred in California; court held that result of defendant's conduct took place in Arizona, thus Arizona had jurisdiction).

13–115 Presumption of innocence and benefit of doubt; degrees of guilt.

.010 A defendant is entitled to be acquitted if there is a reasonable doubt whether guilt is satisfactorily shown; even though jurors have the ability to return a verdict of not guilty even if the state has proved all elements of the offense beyond a reasonable doubt, a defendant has no right to a jury nullification instruction, which would tell them that they may find the defendant not guilty even if they find the state has proved its case beyond a reasonable doubt.

State v. Paredes-Solano, ___ Ariz. ___, 222 P.3d 900, ¶¶ 24–27 (Ct. App. 2009) (trial court correctly refused defendant's following proposed instruction: "You are . . . entitled to act upon your conscientious feeling about what is a fair result in this case and acquit the defendant if you believe strongly that conscience and justice require a verdict of not guilty. No one can require you to return a verdict that does violence to your conscience.").

13–116 Double punishment.

.020 Because the legislature has provided that the same conduct may be punished under different statutes (as long as any punishment is concurrent), there is no requirement that an offense must be punished only under the more lenient statute.

State v. Fimbres, 222 Ariz. 293, 213 P.3d 1020, ¶ 10 (Ct. App. 2009) (defendant was convicted of fraudulent schemes and artifices, class 2 felony, and contended he should have been charged with fraudulent use of credit card, either a misdemeanor or class 5 or 6 felony; court held there was no requirement he should have been charged only with lesser offense).

.070 In order to impose consecutive sentences for two crimes, the transaction must satisfy **two** tests: **First,** whether, after subtracting the facts necessary to support the primary charge, there are sufficient facts to support the secondary charge.

State v. Stock, 220 Ariz. 507, 207 P.3d 760, ¶¶ 10–14 (Ct. App. 2009) (defendant was charged with unlawful flight from law enforcement and resisting arrest; after trial, he admitted he was on release status at time of offenses; defendant contended his "on release" status was functional equivalent of element of unlawful flight, thus if evidence necessary to convict

of unlawful flight while on release were removed, there would be insufficient evidence to convict of resisting arrest while on release; court concluded that, even though jurors had to determine whether defendant was on release at time of offense, that was only for sentencing purposes and that on release status was not element of either offense, thus defendant's argument failed first prong of *Gordon* test).

State v. Stock, 220 Ariz. 507, 207 P.3d 760, ¶¶ 15–16 (Ct. App. 2009) (when officer put on his overhead lights, defendant did not stop but instead accelerated away, finally stopping when his vehicle went into river; defendant then appeared to be trying to swim to opposite shore; officer waded in after defendant and told him he was under arrest; when officer got within arm's reach, defendant began hitting and kicking officer; defendant was charged with unlawful flight from law enforcement and resisting arrest; defendant contended under *Gordon* that he could not receive consecutive sentences; court held that evidence of what happened up to vehicle's going into river was sufficient to convict of unlawful flight, and evidence of what happened after vehicle went into river was sufficient to convict of resisting arrest, thus defendant's argument fails first prong of *Gordon* test).

.080 In order to impose consecutive sentences for two crimes, the transaction must satisfy **two** tests: **Second,** either (1) the defendant could have committed the primary crime without committing the secondary crime, or (2) if the defendant could not have committed the primary crime without committing the secondary crime, the defendant's commission of the secondary crime exposed the victim to more potential harm than necessary in committing the primary crime.

State v. Stock, 220 Ariz. 507, 207 P.3d 760, ¶ 17 (Ct. App. 2009) (when officer put on his overhead lights, defendant did not stop but instead accelerated away, finally stopping when his vehicle went into river; defendant then appeared to be trying to swim to opposite shore; officer waded in after defendant and told him he was under arrest; when officer got within arm's reach, defendant began hitting and kicking officer; defendant was charged with unlawful flight from law enforcement and resisting arrest; defendant contended under *Gordon* that he could not receive consecutive sentences; court held under these facts that defendant could have committed unlawful flight without committing resisting arrest, thus defendant's argument fails second prong of *Gordon* test).

State v. Stock, 220 Ariz. 507, 207 P.3d 760, ¶ 18 (Ct. App. 2009) (when officer put on his overhead lights, defendant did not stop but instead accelerated away, finally stopping when his vehicle went into river; defendant then appeared to be trying to swim to opposite shore; officer waded in after defendant and told him he was under arrest; when officer got within arm's reach, defendant began hitting and kicking officer; defendant was charged with unlawful flight from law enforcement and resisting arrest; defendant contended under *Gordon* that he could not receive consecutive sentences; court held under these facts that defendant's actions in resisting arrest exposed officer to more potential harm than necessary in committing unlawful flight, thus defendant's argument fails second prong of *Gordon* test).

13-201 Requirements for criminal liability.

.010 The state's burden is to prove the elements of the offense beyond a reasonable doubt.

State v. Edmisten, 220 Ariz. 517, 207 P.3d 770, ¶¶ 6–8 (Ct. App. 2009) (defendant's defense was he was involuntarily intoxicated because girlfriend had secretly slipped two Ecstasy pills into his drink; because defense of involuntary intoxication negates requisite mental state for criminal act, it both denies element of offense charged and denies responsibility, thus involuntary intoxication is not affirmative defense; state therefore has burden of disproving involuntary intoxication).

.020 In order to determine whether a statute creates one or more offenses, the court should consider the following: (1) the title of the statute; (2) whether there was a readily perceivable connection between the various acts; (3) whether those acts were consistent with, and not repugnant to, each other; and (4) whether those acts might inhere in the same transaction.

State v. Paredes-Solano, ___ Ariz. ___, 222 P.3d 900, ¶¶ 4–16 (Ct. App. 2009) (defendant was charged with sexual exploitation by "possessing, recording, filming, photographing, developing or duplicating" visual depictions of minor; court noted§ 13-3553(A)(1) prohibited recording, filming, photographing, developing or duplicating, while section (A)(2) prohibited distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing, or exchanging; court concluded that, because section (A)(1) was directed at creation of visual image, while section (A)(2) was directed at acts that can happen only after visual image is created, these two sections address two separate harms, which suggested legislative intent to create two separate offenses).

13-203(A) Causal relationship between conduct and result; relationship to mental culpability—Causal relationship.

.020 An intervening force is not a superseding cause if the defendant's negligence creates the very risk of harm that causes the injury, or when the defendant's conduct increases the foreseeable risk of a particular harm occurring through a second actor.

State v. Slover, 220 Ariz. 239, 204 P.3d 1088, ¶¶ 10–14 (Ct. App 2009) (while intoxicated, defendant drove off roadway; truck rolled down embankment and landed on roof over shallow creek; officers found passenger-victim dead, lying in creek with head submerged in water; victim had BAC of .231; defendant contended that, because there was no definitive evidence that crash rendered victim unconscious, victim could have crawled out of truck himself and then drowned, which defendant contended was superseding cause; court held defendant's negligence was reason victim was in or near creek, intoxicated, with head injuries, or at very least increased foreseeable risk that victim would die in accident, thus defendant was not entitled to superseding cause instruction).

13-205 Affirmative defenses; burden of proof.

.020 Under the version of this statute effective April 24, 2006, if a defendant presents any evidence of justification under A.R.S. §§ 13-401 through -417, the state must prove beyond a reasonable doubt that the defendant did not act with justification.

State v. Valverde, 220 Ariz. 582, 208 P.3d 233, ¶ 2 n.1 (2009) (court noted legislature amended A.R.S. § 13-205 effective April 24, 2006, to provide that, if defendant provides evidence of justification pursuant to chapter 4 of title 13, state must prove beyond reasonable doubt that defendant did not act with justification).

.030 Senate Bill 1449, which sought to nullify the holding of *Garcia v. Browning* and make the previous amendment to § 13–205(A) "retroactively applicable to all cases in which the defendant did not plead guilty or no contest and that were pending . . . on April 24, 2006," is unconstitutional as a violation of the separation of powers.

State v. Montes, 2009 WL 5159762, ¶¶ 4–15 (Ct. App. Dec. 31, 2009) (defendant committed his offenses September 11, 2005; because defendant committed his offenses prior to April 24, 2006, and his trial began after that date, trial court required defendant to prove that he acted in self-defense; defendant was convicted and appealed; court affirmed conviction on September 18, 2009, and defendant filed motion for reconsideration, which was pending on September 30, 2009, effective date of Senate Bill 1449; defendant contended Senate Bill 1449 was change in law that entitled him to new trial; court held Senate Bill 1449 was unconstitutional and thus did not entitle defendant to any relief).

.040 A trial court must give a self-defense instruction only when the defendant has demonstrated that (1) the defendant reasonably believed he or she was in immediate physical danger, (2) the defendant acted solely because of this belief, and (3) the defendant used no more force than appeared reasonably necessary under the circumstances.

State v. King, 222 Ariz. 636, 218 P.3d 1093, ¶¶ 1–18 (Ct. App. 2009) (evidence presented was that victim had thrown and hit defendant on head with full, 2-liter bottle of water, and that defendant then struck victim several times and kicked him in side; victim died from internal bleeding caused by blunt-impact laceration of spleen; court noted that, although § 13–404 does not require that defendant act solely because of belief he or she was in immediate physical danger, Arizona Supreme Court case law imposed this requirement, thus it had to follow that case law; court noted that, although defendant did present evidence that he acted in self-defense, evidence also showed defendant hit and kicked victim in retaliation for throwing water bottle, thus defendant did not act solely because of belief he was in immediate physical danger and therefore was not entitled to self-defense instruction; trial court therefore erred in granting new trial because it failed to give self-defense instruction).

13–404 Justification; self-defense.

.010 A trial court must give a self-defense instruction only when the defendant has demonstrated that (1) the defendant reasonably believed he or she was in immediate physical danger, (2) the defendant acted solely because of this belief, and (3) the defendant used no more force than appeared reasonably necessary under the circumstances.

State v. King, 222 Ariz. 636, 218 P.3d 1093, ¶¶ 1–18 (Ct. App. Nov. 6, 2009) (evidence presented was that victim had thrown and hit defendant on head with full, 2-liter bottle of water, and that defendant then struck victim several times and kicked him in side; victim died from internal bleeding caused by blunt-impact laceration of spleen; court noted that, although § 13–404 does not require that defendant act solely because of belief he or she was in immediate physical danger, Arizona Supreme Court case law imposed this requirement, thus it had to follow that case law; court noted that, although defendant did present evidence that he acted in self-defense, evidence also showed defendant hit and kicked victim in retaliation for throwing water bottle, thus defendant did not act solely because of belief he was in immediate physical danger and therefore was not entitled to self-defense instruction; trial court therefore erred in granting new trial because of failure to give instruction).

13–411(A) Justification; use of force in crime prevention—Justification.

.050 A person who is prohibited by law from possessing a deadly weapon is not entitled to the legal protection of A.R.S. § 13–411 when the person uses a deadly weapon.

State v. Haney, 223 Ariz. 64, 219 P.3d 274, ¶¶ 1–24 (Ct. App. 2009) (defendant rented room from A, who was M's aunt; victim cut his hand with power saw, and went to hospital with M, his mother; A and defendant drove M and victim from hospital to A's house; during drive home, defendant and M argued, and defendant threatened to shoot her when he got home; once home, defendant and victim argued, and when M tried to intervene, defendant punched her twice in face knocking her unconscious; defendant and victim then got into physical fight, and neighbor had to separate them; victim went inside house, but stayed just inside front door; defendant went into his bedroom, got his girlfriend's gun, and pointed it at victim; victim said, "Please don't shoot me," and backed out front door onto lawn; defendant shot victim two or three times in lower body causing victim to fall to ground; defendant walked over to victim and shot him two or three more times in buttocks; during trial, state and defendant stipulated that defendant was prohibited possessor; although defendant did not ask trial court to instruct on justification under § 13–411, defendant contended on appeal that trial court committed fundamental error in not so instructing jurors; court held that, because defendant was prohibited possessor and thus was prohibited from possessing firearm, defendant did not have right to claim justification under § 13–411, thus trial court did not err in not instructing jurors on justification under § 13–411).

13–503 Effect of alcohol or drug use.

.020 Involuntary intoxication is a defense that both denies element of the offense charged and denies responsibility, thus involuntary intoxication is not affirmative defense, and the state therefore has the burden of disproving involuntary intoxication.

State v. Edmisten, 220 Ariz. 517, 207 P.3d 770, ¶¶ 6–17 (Ct. App. 2009) (defendant's defense was he was involuntarily intoxicated because girlfriend had secretly slipped two Ecstasy pills into his drink; defendant contended trial court erred in failing to instruct (1) on level of proof necessary to prove involuntary intoxication, (2) that state had burden of proving every element of offense beyond reasonable doubt, and (3) on operative effect of finding of involuntary intoxication; because defendant did not object at trial, court reviewed for fundamental error only and found none).

.040 Prior to the 1994 amendment, intoxication was a defense for a crime that required an intentional state of mind; because intoxication is not a defense to knowing conduct, if the defendant is charged with both intentional and knowing conduct, the defendant is not entitled to an intoxication instruction.

State v. Kiles, 222 Ariz. 25, 213 P.3d 174, ¶¶ 28–33 (2009) (because premeditation instruction referred to both knowing and intentional mental states, defendant was not entitled to intoxication instruction).

13-603(C) Authorized disposition of offenders—Restitution.

.010 The trial court should order restitution for losses if the following requirements are satisfied: (1) The loss must be economic; (2) the loss must be one that the victim would not have incurred but for the defendant's criminal offense; and (3) the criminal conduct must directly cause the loss.

State v. Lewis, 222 Ariz. 321, 214 P.3d 409, ¶¶ 5–9 (Ct. App. 2009) (as defendant was driving away from party with his brother and another in vehicle, someone at house fired at them; defendant and possibly his brother fired back, striking victim A; defendant was convicted of drive-by shooting and acquitted of aggravated assault; trial court ordered defendant to pay $12,448.94 in restitution to victim A and her insurance company; defendant contended that, because he had been acquitted of aggravated assault, trial court erred in ordering him to pay restitution; court held that, even though drive-by shooting is "victimless" crime, victim A was injured by defendant's drive-by shooting, therefore she was entitled to receive restitution).

.020 The trial court should not order restitution for losses if the following requirements are not satisfied: (1) The loss must be economic; (2) the loss must be one that the victim would not have incurred but for the defendant's criminal offense; and (3) the criminal conduct must directly cause the loss.

State v. Streck, 221 Ariz. 306, 211 P.3d 1290, ¶¶ 9–10 (Ct. App. 2009) (as part of restitution order, trial court ordered defendant to pay $113.77, which was for expenses victim incurred traveling from Texas to Tucson to investigate stolen tractor; court concluded these fees were result either of state's inability to prosecute independently or completely, or victim's mistrust that state would do so, thus these fees did not flow directly from defendant's conduct, so trial court erred in ordering these amounts as restitution).

State v. Slover, 220 Ariz. 239, 204 P.3d 1088, ¶¶ 4–9 (Ct. App 2009) (trial court ordered defendant to pay to victim's wife restitution for attorney fees she incurred in assisting state in pursuing case; court concluded these fees were result either of state's inability to prosecute independently or completely, or wife's mistrust that state would do so, thus these fees did not flow directly from defendant's conduct, so trial court erred in ordering restitution).

.030 The conduct causing the damage need not be an element of the crime for which the defendant was convicted.

State v. Lewis, 222 Ariz. 321, 214 P.3d 409, ¶¶ 5–9 (Ct. App. 2009) (as defendant was driving away from party with his brother and another in vehicle, someone at house fired at them; defendant and possibly his brother fired back, striking victim A; defendant was convicted of drive-by shooting and acquitted of aggravated assault; trial court ordered defendant to pay $12,448.94 in restitution to victim A and her insurance company; defendant contended that, because he had been acquitted of aggravated assault, trial court erred in ordering him to pay restitution; court held that, even though drive-by shooting is "victimless" crime, victim A was injured by defendant's drive-by shooting, therefore she was entitled to receive restitution).

.050 A defendant may be held responsible for all the damage or loss caused to a victim when the defendant undertook criminal conduct in concert with others.

State v. Lewis, 222 Ariz. 321, 214 P.3d 409, ¶¶ 5–18 (Ct. App. 2009) (as defendant was driving away from party with his brother and another in vehicle, someone at house fired at them; defendant and possibly his brother fired back, striking victim A; defendant was convicted of drive-by shooting and acquitted of aggravated assault; trial court ordered defendant to pay $12,448.94 in restitution to victim A and her insurance company; defendant contended that, because he had been acquitted of aggravated assault and thus his brother may have been the shooter, trial court erred in ordering him to pay restitution; court held that, even if brother was shooter, defendant was acting with his brother, thus defendant would be responsible for any damage caused by his brother).

13–604(N) Dangerous and repetitive offenders—Offenses committed in another state. (1994 revision.)

.010 For the state to use an out-of-state conviction, the state must establish that the defendant violated every element of the corresponding crime in Arizona.

State v. Norris, 221 Ariz. 158, 211 P.3d 36, ¶¶ 6–7 (Ct. App. 2009) (statutory provision in federal judgment of conviction narrowed defendant's drug offense to marijuana; to obtain federal conviction, government did not have to prove defendant knew substance was marijuana; because state would have to prove defendant knew substance was marijuana to obtain conviction under Arizona law, federal conviction did not qualify as prior conviction).

.020 In determining whether an out-of-state conviction would be a violation of Arizona law, the court may look only to the statutory elements of the offense and not to the facts underlying the conviction, and may look to the charging document only in order to determine under what subsection the defendant was charged in order to determine particular statutory elements the defendant violated.

State v. Norris, 221 Ariz. 158, 211 P.3d 36, ¶¶ 5–11 (Ct. App. 2009) (statutory provision in federal judgment of conviction narrowed defendant's drug offense to marijuana).

.030 If the defendant does not object to the trial court that the out-of-state conviction would be a violation of Arizona law, the appellate court may review for fundamental error.

State v. Norris, 221 Ariz. 158, 211 P.3d 36, ¶ 1 (Ct. App. 2009) (although defendant did not raise at trial claim that his federal conviction did not qualify as historical prior felony conviction under Arizona law, appellate court reviewed for fundamental error, vacated defendant's sentence, and remanded for resentencing).

13–604(R) Dangerous and repetitive offenders—Commission of offense while released on bail or own recognizance. (1994 revision.)

.030 If a defendant commits two or more offenses while released on bail or own recognizance, the trial court must add 2 years to each sentence, even if the defendant receives consecutive sentences.

State v. Stock, 220 Ariz. 507, 207 P.3d 760, ¶¶ 21–22 (Ct. App. 2009) (defendant was convicted of unlawful flight from law enforcement and resisting arrest; after trial, he admitted he was on release status at time of offenses; trial court imposed consecutive sentences; court held trial court properly added 2 years to each sentence).

13-701(D)(11) Sentence of imprisonment for felony—Aggravating factors—Prior conviction of felony within 10 years.

.020 A defendant's criminal history of multiple qualifying felony convictions constitutes only a single aggravating factor.

State v. Provenzino, 221 Ariz. 364, 212 P.3d 56, ¶¶ 10-16 (Ct. App. 2009) (defendant had four prior felony convictions, at least two of which would have qualified as aggravating factors; because trial court was correct that multiple felonies could count as only one aggravating factor, maximum sentence on each of defendant's two convictions was 12 years, rather than 15 years if more than one aggravating factor, thus defendant was entitled only to eight-person jury).

13-701(D)(24) Sentence of imprisonment for felony—Aggravating factors—Any other factor.

.010 In determining the sentence, the trial court may consider any other factor that the state alleges is relevant to the defendant's character or background or to the nature or circumstances of the crime, but the trial court may not increase a defendant's maximum potential sentence based solely on this "catch all" aggravating factor.

State v. Schmidt, 220 Ariz. 563, 208 P.3d 214, ¶¶ 5-10 (2009) (court held that "catch all" aggravating factor is patently vague, and using that factor as sole factor to increase defendant's sentence violates due process because it gives trial court virtually unlimited post hoc discretion to determine whether defendant's prior conduct is functional equivalent of element of aggravated offense).

State v. Zinsmeyer, 222 Ariz. 612, 218 P.3d 1069, ¶¶ 20-25 (Ct. App. 2009) (court held current version of catch-all provision is as "patently vague" as former section).

State v. Perrin, 222 Ariz. 375, 214 P.3d 1016, ¶¶ 4-9 (Ct. App. 2009) (court held trial court was not permitted to increase statutory range under former A.R.S. § 13-702.01 by relying on two aggravating factors under "catch all" aggravating factor).

.020 Once the trier of fact shall has found the existence of one or more enumerated aggravating factors and thus the maximum range is increased, the trial court may then consider anything under the "catch all" aggravating factor to determine the sentence to be imposed within the maximum range.

State v. Schmidt, 220 Ariz. 563, 208 P.3d 214, ¶¶ 11-12 (2009) (because trial court increased length of defendant's sentence based solely on "catch all" aggravating factor, court held sentence was invalid).

13-709.03. Special sentencing provisions; drug offenses.

.010 A person convicted of a methamphetamine with a prior conviction for methamphetamine must be sentenced under this section even though it results in a lesser sentence than the person would have received under the general sentencing statutes.

State v. Diaz, 222 Ariz. 188, 213 P.3d 337, ¶¶ 7-14 (Ct. App. 2009) (trial court imposed aggravated sentence of 25 years under former A.R.S. § 13-604(D) (now § 13-703(C) & (J)); court held trial court should have sentenced defendant under statute specific to methamphetamine convictions, even though maximum sentence under that provision was 20 years).

13–711 Consecutive terms of imprisonment.

.010 The criminal code presumes that multiple sentences, and a sentence when the defendant is serving another sentence, will be served consecutively, and the trial court may not impose a concurrent sentence unless it states reasons for doing so.

State v. Provenzino, 221 Ariz. 364, 212 P.3d 56, ¶¶ 22–26 (Ct. App. 2009) (because court could not tell from transcript, minute entry, and order of confinement whether trial court imposed concurrent or consecutive sentences, court remanded to trial court for it to state what it intended to impose, and if sentences were to be concurrent, give reasons for concurrent sentences).

13–712(B) Calculation of term of imprisonment—Credit for time spent in custody.

.010 A defendant is entitled to presentence incarceration credit for all time spent in custody.

State v. Boozer, 221 Ariz. 601, 212 P.3d 939, ¶ 7 (Ct. App. 2009) (defendant was in custody on 1/04/05 and on 12/27/06, and from 4/09/08 to 6/04/08; trial court incorrectly calculated that defendant was entitled to credit for 57 days of presentence incarceration; court concluded defendant was entitled to credit for 58 days of presentence incarceration and modified sentence accordingly).

13–753(B) Mental evaluations of capital defendants; hearing; appeal; definitions—Appointment of expert.

.010 If the state files a notice of intent to seek the death penalty, the court shall appoint a pre-screening psychological expert in order to determine the defendant's intelligence quotient using current community, nationally and culturally accepted intelligence testing procedures.

State ex rel. Thomas v. Duncan, 222 Ariz. 448, 216 P.3d 1194, ¶¶ 1–20 (Ct. App. 2009) (defendant had been examined by his own expert; court held that trial court properly appointed expert to conduct pre-screening examination, but erred when it limited that examination to review of prior tests).

13–805(A) Jurisdiction—Manner of payment and restitution orders.

.030 The language, "At the time the defendant completes his period of probation" means that the trial court does not have the authority to enter a criminal restitution order before that time.

State v. Lewandowski, 220 Ariz. 531, 207 P.3d 784, ¶¶ 4–10 (Ct. App. 2009) (at time trial court sentenced, it imposed fines and surcharges of $5,400 and entered criminal restitution order for that amount; court held that trial court erred in doing so, and that criminal restitution order resulted in illegal sentence because defendant would have to pay interest prior to time that statute allowed).

13–805(C) Jurisdiction—Enforcement and interest.

.010 A criminal restitution order accrues interest from the time it is entered.

State v. Lewandowski, 220 Ariz. 531, 207 P.3d 784, ¶¶ 4–15 (Ct. App. 2009) (at time trial court sentenced, it imposed fines and surcharges of $5,400 and entered criminal restitution order for that amount; court held that trial court erred in doing so, and that criminal restitution order resulted in illegal sentence because defendant would have to pay interest prior to time that statute allowed).

13–1105 First-degree murder—Premeditated.

.010 To prove premeditated first-degree murder, the state must prove to the jurors beyond a reasonable doubt the defendant actually reflected; to the extent the statute provides that "proof of actual reflection is not required," that only means proof by direct evidence is not required, thus the state may prove reflection by circumstantial evidence, such as the passage of time.

State v. Kiles, 222 Ariz. 25, 213 P.3d 174, ¶¶ 15–20 (2009) (defendant contended trial court committed fundamental error in giving following instruction: "Premeditation means the defendant acts with the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by a length of time to permit reflection; an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion"; court held that, because instruction did not state premeditation could be "as instantaneous as successive thoughts of mind" and did not state that "proof of actual reflection is not required," instruction was not error).

State v. Kiles, 222 Ariz. 25, 213 P.3d 174, ¶¶ 21–22 (2009) (although prosecutor told jurors that time required to premeditate could be "instantaneous," prosecutor made it clear to jurors that such was not case in this matter, and further argued that defendant had to go out to his car to obtain weapon he used to beat victim, and that when this did not kill victim, defendant had to resume his assault; court held this was permissible argument that circumstantial evidence showed that defendant did reflect on killing).

13–1105 First-degree murder—Felony murder.

.110 Although the felony of aggravated assault will not support a charge of felony murder, any of the other listed predicate felonies will, and they do not merge into the murder.

State v. Moore, 222 Ariz. 1, 213 P.3d 150, ¶¶ 57–63 (2009) (defendant was charged with one count of premeditated murder and two counts of premeditated and felony murder with underlying felony being burglary; court rejected defendant's contention that felony murder could not be predicated on burglary that is itself based on intent to murder).

13–1203 Assault.

.010 When the elements of one offense differ materially from those of another, they are distinct and separate crimes, even if the two are defined in subsections of the same statute.

State v. Freeney, 223 Ariz. 110, 219 P.3d 1039, ¶¶ 16–17 (2009) (grand jury indicted defendant for aggravated assault based on § 13–1203(A)(2) (placing another in reasonable apprehension of imminent physical injury); on first day of trial, before jury selection, state moved to amend indictment to change theory of assault from § 13–1203(A)(2) to § 13–1203(A)(1) (causing physical injury to another); court held that amendment changed nature of offense, but because defendant had notice from (1) allegation of dangerousness, (2) police reports, medical reports, and photographs showing victim's injuries; and (3) joint pretrial statement that state was alleging that he caused physical injury to victim, any error was harmless).

13–1301 Definitions (Restrain).

.010 "Restrain" means to restrict a person's movements without consent, without legal authority, and in a manner that interferes substantially with such person's liberty, by either moving such person from one place to another or by confining such person; restraint is without consent if it is accomplished by: (1) physical force, intimidation, or deception; or (2) any means including acquiescence of the victim if the victim is a child less than 18 years old or an incompetent person and the victim's lawful custodian has not acquiesced in the movement or confinement.

State v. Latham, 223 Ariz. 70, 219 P.3d 208, ¶¶ 10–20 (Ct. App. 2009) (husband told wife "[defendant] has gun in his lap, and he threatened to kill me if he doesn't get his money," and then gave wife $10,000 check and asked her to go to credit union to cash it, which she did; court held this constituted "restraint" of wife under kidnapping statute).

13–1304(A) Kidnapping—Elements.

.010 The elements of kidnapping are (1) knowingly restraining a person (2) with the intent to commit one or more of the specifically listed offenses.

State v. Bearup, 221 Ariz. 163, 211 P.3d 684, ¶¶ 15–19 (2009) (defendant contended state did not show he intended to inflict death or physical injury; court noted defendant said, "Let's go play, boys" to his cohorts before attack; defendant and cohorts went to victim's house armed with weapons; defendant displayed long-bladed knife as cohorts surrounded victim and stood only few feet away as they beat victim; several witnesses testified that defendant and cohorts were acting together; and defendant told his ex-wife that he went with some friends to beat up somebody; court held this was sufficient to support kidnapping).

State v. Latham, 223 Ariz. 70, 219 P.3d 208, ¶¶ 10–20 (Ct. App. 2009) (husband told wife "[defendant] has gun in his lap, and he threatened to kill me if he doesn't get his money," and then gave wife $10,000 check and asked her to go to credit union to cash it, which she did; court held this constituted "restraint" of wife under kidnapping statute).

13–1405 Sexual conduct with a minor.

.080 Because a person commits continuous sexual abuse of a child by engaging in three or more acts of either sexual conduct with a minor or sexual assault or child molestation of a child, a person can commit continuous sexual abuse of a child without necessarily committing sexual conduct with a minor, thus sexual conduct with a minor is not a lesser-included offense of continuous sexual abuse of a child.

State v. Larson, 222 Ariz. 341, 214 P.3d 429, ¶¶ 2–12 (Ct. App. 2009) (jurors convicted defendant of sexual conduct with minor as lesser-included offense of continuous sexual abuse of child; court therefore vacated conviction and sentence for sexual conduct with minor).

13–1417(A) Continuous sexual abuse of a child—Elements.

.020 Because a person commits continuous sexual abuse of a child by engaging in three or more acts of either sexual conduct with a minor or sexual assault or child molestation of a child, a person can commit continuous sexual abuse of a child without necessarily committing sexual conduct with a minor, thus sexual conduct with a minor is not a lesser-included offense of continuous sexual abuse of a child.

State v. Larson, 222 Ariz. 341, 214 P.3d 429, ¶¶ 2–12 (Ct. App. 2009) (jurors convicted defendant of sexual conduct with minor as lesser-included offense of continuous sexual abuse of child; court therefore vacated conviction and sentence for sexual conduct with minor).

State v. Larson, 222 Ariz. 341, 214 P.3d 429, ¶¶ 13–18 (Ct. App. 2009) (because statute for continuous sexual abuse of child specifically provides that defendant shall not be charged in same proceeding with any other sexual offense with same victim unless either (1) offense occurred outside time period charged or (2) other sexual offense is charged in alternative, sexual conduct with minor could not be lesser-included offense of continuous sexual abuse of child under charging document test; court therefore vacated conviction and sentence for sexual conduct with minor).

13–1501 Definitions. (Criminal trespass and burglary.)

.020 Because the definition of "structure" includes a vehicle, entry into a vehicle with the intent to commit a theft or felony therein constitutes a burglary.

State v. Zinsmeyer, 222 Ariz. 612, 218 P.3d 1069, ¶¶ 27–33 (Ct. App. 2009) (court rejected defendant's argument that definition of phrase "enter or remain unlawfully," which contains only the word "premises" made burglary statute ambiguous).

13–1506 Burglary in the third degree.

.020 Because the definition of "structure" includes a vehicle, entry into a vehicle with the intent to commit a theft or felony therein constitutes a burglary.

State v. Zinsmeyer, 222 Ariz. 612, 218 P.3d 1069, ¶¶ 27–33 (Ct. App. 2009) (court rejected defendant's argument that definition of phrase "enter or remain unlawfully," which contains only the word "premises" made burglary statute ambiguous).

13–1507 Burglary in the second degree.

.010 A person commits burglary when that person *either* enters *or* remains in a structure with the intent to commit a felony or a theft.

State v. McKenna, 222 Ariz. 396, 214 P.3d 1037, ¶¶ 5–8 (Ct. App. 2009) (defendant contended state presented insufficient evidence that he committed felony murder; he did not dispute that he caused victim's death, but contended there was insufficient evidence that he committed predicate felony; he did not dispute that he entered or remained unlawfully, but contended there was no evidence that he did so with intent to commit theft; court noted that burglary conviction may be premised on intent to commit any felony, not just a theft; court concluded there was sufficient evidence to show he intended to commit, and actually did commit aggravated assault).

13–1801(A)(9) Definitions (Theft)—Means of transportation.

.010 "Means of transportation" means any vehicle, which means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, waterway, or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

State v. Streck, 221 Ariz. 306, 211 P.3d 1290, ¶¶ 3–8 (Ct. App. 2009) (defendant sold farm tractor belonging to victim; court concluded farm tractor is means of transportation for purposes of A.R.S. § 13–1814, theft of means of transportation).

13-1802(A)(4) Theft—Elements—Control of lost, mislaid, or mis-delivered property.

.410 A person commits theft by coming into control of lost, mislaid, or misdelivered property of another under circumstances providing the means of determining the true owner of the property, and appropriating that property to the person's own use; "appropriate . . . to person's own use" means that the person has possession of the property to the exclusion of the true owner in such a way that the person would be capable of using that property, thus the statute does not require that the person actually use the property.

State v. Jernigan, 221 Ariz. 17, 209 P.3d 153, ¶¶ 6–20 (Ct. App. Jan. 13, 2009) (defendant was found in possession of book of checks and credit card belonging to person, and credit card belonging to another person; court rejected defendant's contention that statute required he actually use the stolen property, and instead held that, because he had possession of these items for nearly 2 weeks and made no effort to locate the true owners, he held that property to exclusion of true owners, and it could be inferred from defendant's possession of more than one stolen item that he intended to appropriate stolen property for his own use).

13–1814 Theft of means of transportation.

.010 A person violates this section by controlling, converting, or obtaining another person's means of transportation, which is defined in A.R.S. § 13–1801(A)(9) (means of transportation) and § 13–105(40) (vehicle).

State v. Streck, 221 Ariz. 306, 211 P.3d 1290, ¶¶ 3–8 (Ct. App. 2009) (defendant sold farm tractor belonging to victim; court concluded farm tractor is means of transportation for purposes of A.R.S. § 13–1814, theft of means of transportation).

13–1904 Armed robbery.

.010 In order to be guilty of armed robbery, the defendant must use either an actual deadly weapon, a dangerous instrument, or a simulated deadly weapon; mere words indicating the presence of a deadly weapon are insufficient.

State v. Leyvas, 221 Ariz. 181, 211 P.3d 1165, ¶¶ 33–35 (Ct. App. 2009) (defendant pointed either gun or simulated deadly weapon at two women and asked them if they had any money; court held this was sufficient to prove attempted armed robbery).

13–2102 Theft of a credit card.

.010 A person commits theft of a credit card by controlling the credit card without the owner's consent, by coming into control of lost, mislaid, or misdelivered property of another under circumstances providing the means of determining the true owner of the property, and appropriating that property to the person's own use; "appropriate . . . to person's own use" means that the person has possession of the property to the exclusion of the true owner in such a way that the person would be capable of using that property, thus the statute does not require that the person actually use the property.

State v. Jernigan, 221 Ariz. 17, 209 P.3d 153, ¶¶ 6–20 (Ct. App. Jan. 13, 2009) (defendant was found in possession of book of checks and credit card belonging to person, and credit card belonging to another person; court rejected defendant's contention that statute required he actually use the stolen property, and instead held that, because he had possession of these items for nearly 2 weeks and made no effort to locate the true owners, he held that property to exclusion of true owners, and that it could be inferred from defendant's possession of more than one stolen item that he intended to appropriate stolen property for his own use).

13-2104(A)(1) Forgery of credit card—Altering credit card.

.010 A person commits forgery of a credit card if the person, with the intent to defraud, either (1) alters any credit card, falsely makes, manufactures, fabricates, or causes to be made, manufactured or fabricated, an instrument or device purporting to be a credit card without the express authorization of an issuer to do so, or (2) falsely embosses or alters a credit card, instrument, or device purporting to be a credit card, or utters such a credit card or instrument or device purporting to be a credit card.

State v. Fimbres, 222 Ariz. 293, 213 P.3d 1020, ¶¶ 20–21 (Ct. App. 2009) (defendant purchased merchandise using gift cards that had been altered so that information encoded on magnetic strips corresponded to various credit and debit cards belonging to persons other than defendant; because defendant had to present, or utter, credit card to make purchase with gift card, defendant's conduct violated this section).

13-2310 Fraudulent schemes and artifices.

.010 To violate the fraudulent schemes and artifices statute in Arizona, (1) there must be a scheme or artifice to defraud, (2) the defendant must knowingly and intentionally engage in it, and (3) the scheme must be to obtain a benefit by means of false or fraudulent pretenses, representations, or promises.

State v. Fimbres, 222 Ariz. 293, 213 P.3d 1020, ¶¶ 5–8 (Ct. App. 2009) (defendant purchased merchandise using gift cards that had been altered so that information encoded on magnetic strips corresponded to various credit and debit cards belonging to other persons; defendant contended there was no evidence he created any pretense, misrepresented himself, or concealed anything from store cashiers; state presented evidence that gift cards were not valid and instead had been illegally altered; court held there was sufficient evidence from which jurors could conclude that defendant falsely represented that gift cards were legitimate rather than illegally altered; defendant claimed he thought gift cards were valid; court held this was issue of defendant's credibility, not of sufficiency of evidence).

13-2316 Computer fraud.

.010 The prohibition of this statute is not limited just to "computer hacking," and instead criminalizes various forms of accessing computer systems without authority or authorization.

State v. Fimbres, 222 Ariz. 293, 213 P.3d 1020, ¶¶ 11–13 (Ct. App. 2009) (defendant purchased merchandise using gift cards that had been altered so that information encoded on magnetic strips corresponded to various credit and debit cards belonging to persons other than defendant; court held that, because stores' credit card reader was linked to computer system and to charge or debit a cardholder's account, credit card reader had to access computer system, defendant's actions violated this statute).

13-2921.01. Aggravated harassment; classification; definition.

.010 A person commits aggravated harassment if the person commits harassment as provided in § 13-2921 and (1) a court has issued an order of protection or an injunction against harassment against the person and in favor of the victim, (2) the order or injunction has been served on the person, and (3) the order or injunction is still valid; under A.R.S. § 12-1809(J), an injunction against harassment expires 1 year after service on the person.

State v. Lychwick, 222 Ariz. 604, 218 P.3d 1061, ¶¶ 3–15 (Ct. App. 2009) (injunction against harassment was served on defendant 1/17/06 at 11:00 a.m.; on 1/17/07 at 10:00 a.m. defendant threw package onto victim's driveway; defendant contended injunction expired at end of day on 1/16/07, thus he was not guilty; court followed usual method of computing time, which is excluding first day and including last day, and thus concluded injunction expired at end of day on 1/17/07, thus defendant committed act in question while injunction was still in effect).

13–2926 Abandonment or concealment of a dead body.

.010 This statute makes it unlawful for a person knowingly to move a dead human body or parts of a human body with the intent to abandon or conceal the dead human body or parts; as used in this context, "dead human body" means a body that was alive at one point.

State v. Lockwood, 222 Ariz. 551, 218 P.3d 1008, ¶¶ 4–13 (Ct. App. 2009) (defendant was convicted of burying fetus that she had miscarried; because state was unable to prove that fetus had ever been alive, defendant could not be convicted of violating this section, so court vacated conviction).

13–3405(A) Possession, use, production, sale, or transportation of marijuana—Prohibited acts.

.020 To violate this section, the person must know that the substance is marijuana, which may be shown by circumstantial evidence.

State v. Tillmon, 222 Ariz. 452, 216 P.3d 1198, ¶¶ 17–19 (Ct. App. 2009) (court held following evidence was sufficient to show defendant knew vehicle contained marijuana; defendant was arrested 3/1/07; license plates on both truck and trailer belonged to other vehicles; trailer contained 1,569 pounds of marijuana; tarp covering marijuana had defendant's first name written on it; social security statement showed defendant had no earnings from 1998 through 2001, incomes of $650 in 2002, $13,515 in 2003, and nothing in 2004; defendant had $ 3,000 in cash on him; deposit slips showed defendant made deposits of $2,500 on 1/10/07 and $3,000 on 2/5/07, with available balance of $17,226.78 on 2/23/07).

13–3553(A)(1) Sexual exploitation of a minor—Creation of visual image.

.010 Subsection (A)(1) prohibits recording, filming, photographing, developing, or duplicating, while subsection(A)(2) prohibits distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing, or exchanging; because section (A)(1) is directed at the creation of the visual image, while section (A)(2) is directed at acts that can happen only after the visual image is created, these two sections address two separate harms and thus are two separate offenses;

State v. Paredes-Solano, ___ Ariz. ___, 222 P.3d 900, ¶¶ 4–16 (Ct. App. 2009) (defendant was charged with sexual exploitation by "possessing, recording, filming, photographing, developing or duplicating" visual depictions of minor; because single count of indictment charged two distinct and separate offenses, indictment was duplicitous).

13-3553(A)(2) Sexual exploitation of a minor—After visual image is created.

.010 Subsection (A)(1) prohibits recording, filming, photographing, developing, or duplicating, while subsection(A)(2) prohibits distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing, or exchanging; because section (A)(1) is directed at the creation of the visual image, while section (A)(2) is directed at acts that can happen only after the visual image is created, these two sections address two separate harms and thus are two separate offenses;

State v. Paredes-Solano, ___ Ariz. ___, 222 P.3d 900, ¶¶ 4-16 (Ct. App. 2009) (defendant was charged with sexual exploitation by "possessing, recording, filming, photographing, developing or duplicating" visual depictions of minor; because single count of indictment charged two distinct and separate offenses, indictment was duplicitous).

13-3554 Luring a minor for sexual exploitation.

.030 In order to violate this section, the defendant need only use language from which the jurors could conclude that the defendant in fact solicited or offered to engage in sexual conduct with a minor; there is no requirement that the words of the offer or solicitation have a precise degree of certainty or involve any particular sexual language.

State v. Yegan, 223 Ariz. 213, 221 P.3d 1027, ¶ 28 (Ct. App. 2009) (court rejected defendant's contention that offer or solicitation have precise degree of certainty or involve particular sexual language).

13-3967. Release on bailable offense before trial.

.030 The purposes of bail are (1) to assure the appearance of the accused, (2) to protect against intimidation of witnesses, and (3) to protect the safety of the victim, any other person, and the community; because the source of the pledged property or cash may affect whether the accused does appear in the future, the trial court has the authority to order the defendant to disclose source of funds used to post bail.

State v. Donahoe (Garibaldi-Osequera), 220 Ariz. 126, 203 P.3d 1186, ¶¶ 10-17 (Ct. App. 2009) (because pledged property or cash that comes from illegal activity may not in fact secure defendant's future appearance because defendant would have no legal right to pledged property or cash and losing it would be of no consequence and defendant may view forfeiture simply as cost of doing business, trial court has authority to order defendant to disclose source of funds used to post bail).

13-4503 Request for competency examination.

.010 At any time after the prosecutor charges a criminal offense by complaint, information, or indictment, any party or the court on its own motion may request in writing that the defendant be examined to determine the defendant's competency; once any court determines that reasonable grounds exist for further competency proceedings, the superior court shall have exclusive jurisdiction over all competency hearings.

State v. Silva, 222 Ariz. 457, 216 P.3d 1203, ¶¶ 8-10 (Ct. App. 2009) (defendant contended trial court did not have jurisdiction because it ordered three separate restoration periods totaling over 32 months, which exceeded 21 months allowed by statute; court held that, because defendant was charged with committing felony offense, trial court had jurisdiction).

13-4510 Competency hearing and orders.

.010 The trial court is limited to 21 months within which to order a defendant into restoration treatment.

State v. Silva, 222 Ariz. 457, 216 P.3d 1203, ¶¶ 12–26 (Ct. App. 2009) (defendant contended trial court erred because it ordered three restoration periods totaling over 32 months, which exceeded 21 months allowed by statute; because first period was 8 months before trial court determined defendant was competent, second period was 6 months before trial court determined defendant was competent, and third period was 18 months before trial court determined defendant was competent, no one period exceeded 21-month limit, thus trial court did not exceed time limit provided by statute).

13-4517 Incompetent defendants; disposition.

.020 Although A.R.S. § 13-4517 does not have the same procedural steps as § 36-523, it provides a proper procedure for the evaluation and treatment of one with a mental disability, thus if the court follows the procedure in § 13-4517, it does not have to follow the procedure in § 36-523.

In re MH 2008-000028, 221 Ariz. 277, 211 P.3d 1261, ¶¶ 14–22 (Ct App. 2009) (court rejected appellant's claim that procedure was defective because state did not file Petition for Evaluation).

21-102 Juries; size; degree of unanimity required; waiver.

.010 A jury for trial of a criminal case in which a sentence of death or imprisonment for 30 years or more is authorized by law shall consist of 12 persons, and the concurrence of all shall be necessary to render a verdict; a jury for trial in any court of record of any other criminal case shall consist of eight persons, and the concurrence of all shall be necessary to render a verdict.

State v. Escobedo, 222 Ariz. 252, 213 P.3d 689, ¶¶ 2, 9, 20–23, 48 (Ct. App. 2009) (court analyzed Arizona Supreme Court cases to determine whether court used conjunctive or disjunctive test to determine whether error is structural; court held that failure to impanel 12 person jury was not structural error, and must instead be reviewed under fundamental error analysis), *aff'd,* 2010 WL 532342 (Ct. App. Feb. 16, 2010).

.020 If the charges and enhancements are such that the defendant could receive a possible punishment of 30 years or more, if the trial court impanels only an eight-person jury and there is no objection, if the trial court may legally impose a sentence of less than 30 years, then a sentence of 30 years or more is no longer permitted and the requirement of a 12-person jury no longer applies.

State v. Soliz, 223 Ariz. 116, 219 P.3d 1045, ¶¶ 12–18 (2009) (defendant was charged with possession of dangerous drugs for sale; with allegation of prior convictions, defendant could have received maximum sentence of 35 years; trial court impaneled only eight-person jury and neither defendant nor state objected; after jurors convicted defendant, state declined to prove defendant's prior convictions or any aggravating circumstances; trial court imposed presumptive sentence of 10 years; court held that defendant's maximum sentence thereby was limited to less than 30 years, thus there was no error in impaneling eight person jury).

22-301(A) Criminal proceedings in justice courts—Jurisdiction of criminal actions—Jurisdiction.

.030 Any penalty or other added assessment levied shall not be considered part of fine for purposes of determining jurisdiction

Rogers v. Cota, 223 Ariz. 44, 219 P.3d 254, ¶¶ 5–11 (Ct. App. 2009) (legislature provided that inferior courts would have jurisdiction over misdemeanors and criminal offenses punishable by fine not exceeding $2,500; court held that, because legislature had power to set jurisdictional limits, it had power to provide that any penalty or other added assessment levied would not be considered part of fine for purposes of determining jurisdiction, thus fact that added to mandatory minimum DUI fine of $1,000 was 84% surcharge and three additional assessments totaling $2,750 did not deprive municipal court of jurisdiction).

28-622 Failure to comply with police officer.

.010 In order to violate this section, a person must wilfully fail or refuse to comply with any lawful order or direction of a police officer invested by law with authority to direct, control, or regulate traffic.

State v. Gonzalez, 221 Ariz. 82, 210 P.3d 1253, ¶¶ 6–11 (Ct App. 2009) (because failure to comply with police officer under § 28-622 requires that (1) police officer invested by law with authority to direct, control, or regulate traffic must issue (2) any lawful order or direction, and unlawful flight from pursuing law enforcement vehicle under A.R.S. § 28-622.01 has neither of these requirements, it is possible to commit unlawful flight without committing failure to comply, thus failure to comply is not lesser-included offense of unlawful flight).

28-622.01 Unlawful flight from pursuing law enforcement vehicle.

.070 Because failure to comply with a police officer under § 28-622 requires that (1) a police officer invested by law with authority to direct, control, or regulate traffic must issue (2) any lawful order or direction, and unlawful flight from pursuing law enforcement vehicle under § 28-622.01 has neither of these requirements, it is possible to commit unlawful flight without committing failure to comply, thus failure to comply is not a lesser-included offense of unlawful flight.

State v. Gonzalez, 221 Ariz. 82, 210 P.3d 1253, ¶¶ 6–11 (Ct App. 2009) (officer saw defendant driving and knew his driver's license was suspended, so officer turned on overhead emergency lights; defendant did not stop and instead kept driving; officer turned on his siren, but defendant still did not stop; court held defendant was not entitled to instruction on failure to comply with police officer).

28-754 Turning movements and required signals.

.010 This statute provides that a driver shall not turn a vehicle or move right or left on a roadway unless the driver can make the movement with reasonable safety, and also requires the driver to give an appropriate signal when turning a vehicle or moving right or left on a roadway in the event the movement might affect other traffic.

State v. Starr, 222 Ariz. 65, 213 P.3d 214, ¶¶ 13–17 (Ct. App. 2009) (statute requires driver to signal at least 100 feet before changing lanes; defendant moved from left to right lane, but did not signal until vehicle straddled line between lanes; court rejected defendant's read-

ing of statute that would require that driver not turn or change lanes unless driver could do so with reasonable safety, but that driver was required to signal only when turning, but did not have to do so when changing lanes).

.020 A driver must signal when turning a vehicle or moving right or left on a roadway in the event the movement might affect other traffic.

State v. Starr, 222 Ariz. 65, 213 P.3d 214, ¶¶ 19–25 (Ct. App. 2009) (defendant was traveling on Interstate and moved from left to right lane as he passed on-ramp in which large commercial truck was merging; defendant's vehicle was approximately 150 feet from front of truck; court rejected defendant's contention that signal was required only if movement **did** affect other traffic, and held instead that signal was required if movement **might** affect other traffic).

28–1321(B) Implied consent to blood, breath or urine test; suspension of license upon refusal; hearing; review of suspension order—Refusal to submit to test.

.050 Arizona's Implied Consent Law requires the state to obtain a warrant before drawing a blood sample from a DUI suspect unless the suspect "expressly agree[s]" to submit to the blood test, and for there to be an "express agreement" as required by statute, the suspect must do so affirmatively and unequivocally by words or conduct, and the officers may not infer an agreement from a suspect's mere failure to communicate a clear objection to the test.

Carrillo v. Houser, 222 Ariz. 356, 214 P.3d 444, ¶¶ 1–14 (Ct. App. 2009) (at motion to suppress, defendant testified that he did not speak English and that none of officers spoke to him in Spanish, and that he did not consent to drawing of his blood; state presented testimony that officers told defendant they were going to take his blood, to which defendant held out his arm; court held this conduct was not "express agreement" as required by statute, and remanded for trial court to determine whether defendant did consent to blood test).

28–1323(C) Admissibility of breath test or other records—Manufacturers schematics and software.

.010 Before a trial court may order disclosure, a defendant must show a "substantial need" for the requested information, and that the defendant "is unable without undue hardship to obtain the substantial equivalent by other means."

State v. Bernini (Daughters-White), 222 Ariz. 607, 218 P.3d 1064, ¶¶ 8–15 (Ct. App. 2009) (because defendants failed to establish how or even if alleged software deficiencies affected their intoxilyzer tests, trial court abused discretion in ordering state to produce software for Intoxilyzer 8000).

.020 The state has an obligation under Rule 15.1 to disclose material information not in its possession or under its control only if: (1) the state has better access to the information; (2) the defense shows that it has made a good faith effort to obtain the information without success; and (3) the information has been specifically requested by the defendant.

State v. Bernini (Daughters-White), 222 Ariz. 607, 218 P.3d 1064, ¶¶ 6–7 (Ct. App. 2009) (after remand, trial court concluded court of appeals had vacated trial court's order that state disclose source code, but had not vacated trial court's order that state disclose software for Intoxilyzer; court of appeals stated that its previous opinion vacated trial court's entire order, which included both source code and related software).

State v. Bernini (Daughters-White), 220 Ariz. 536, 207 P.3d 789, ¶¶ 7–9 (Ct. App. 2009) (DUI defendants requested source code for Intoxilyzer 8000; trial court found that source code was not in possession of prosecutor or any one controlled by prosecutor; trial court nonetheless ordered prosecutor to obtain source code and give it to defendants; court held record supported conclusion that state had neither possession of source code nor control over manufacturer of Intoxilyzer, and because there was no evidence in record to support trial court's conclusion that state had better access to source code than defendant, trial court erred in ordering state to obtain and disclose source code).

28–1382(A). Driving or actual physical control while under the extreme influence of intoxicating liquor; trial by jury; sentencing—Elements.

.010 This statute provides that a person violates this provision if the person is driving or is in actual physical control of a vehicle and has an alcohol concentration within two hours of driving.

Cicoria v. Cole, 222 Ariz. 428, 215 P.3d 402, ¶¶ 10–20 (Ct. App. 2009) (court noted that current version of statute enacted in 2008 specifically provides for enhanced punishment if listed alcohol concentration is within 2 hours of driving, and held that statute effective prior to 2008 also provided for enhanced punishment if alcohol concentration was within 2 hours of driving, even though statute did not specifically so state).

28–1382(E). Driving or actual physical control while under the extreme influence of intoxicating liquor; trial by jury; sentencing—Length of sentence.

.010 This statute provides that a person violates this provision if the person is driving or is in actual physical control of a vehicle and has an alcohol concentration within 2 hours of driving, and further provides for sentencing lengths based on alcohol concentration within 2 hours of driving.

Cicoria v. Cole, 222 Ariz. 428, 215 P.3d 402, ¶¶ 10–20 (Ct. App. 2009) (court noted that current version of statute enacted in 2008 specifically provides for enhanced punishment if listed alcohol concentration is within 2 hours of driving, and held that statute effective prior to 2008 also provided for enhanced punishment if alcohol concentration was within 2 hours of driving, even though statute did not specifically so state).

28–1388(A) Blood and breath tests; violation; classification; admissible evidence—Qualification of person drawing blood.

.010 The fundamental question for blood draws and the Fourth Amendment is not whether the blood draw program as a whole is reasonable, but rather whether the means and procedure used in taking the defendant's blood was reasonable.

State v. Noceo, 223 Ariz. 222, 221 P.3d 1036, ¶¶ 6–12 (Ct. App. 2009) (court held trial court erred by evaluating entire DPS phlebotomy program instead of defendant's particular blood draw; furthermore, court concluded there were no overall defects in DPS phlebotomy program).

§ 28-1559(B) Traffic case records; abstract of record; reports—Duty to report.

.010 This section requires each magistrate of the court or clerk of the court of record to forward to the Department of Transportation an abstract of the record of any conviction, judgment, or forfeiture of bail for an offense in Chapter 3 (§§ 28-601 to -1202), Chapter 4 (§§ 28-1301 to -1467) or Chapter 5 (§§ 28-1501 to -1654), or any other law regulating the operation of a vehicle on a highway.

In re Martin M., 223 Ariz. 244, 221 P.3d 1058, ¶¶ 12-14 (Ct. App. 2009) (juvenile was convicted of possession of marijuana; because this offense was not one of ones listed in § 28-1559(B), that statute did not require trial court to notify ADOT of conviction, thus trial court had discretion whether to report conviction to ADOT).

In re Hillary C., 220 Ariz. 78, 210 P.3d 1249, ¶¶ 1-14 (Ct App. 2009) (juvenile was adjudicated delinquent of driving while having alcohol in system; court held trial court erred in concluding that it had discretion whether to report violation to ADOT, noting that, because juvenile was convicted of offense regulating operation of vehicle on highway, §§ 28-3305(B) and 28-1559(B) & (H) require trial court to forward record of conviction to ADOT, and that § 28-1559(J) made failure, refusal, or neglect of judicial officer to comply with § 28-1559 misconduct in office and grounds for removal from office).

§ 28-1559(H) Traffic case records; abstract of record; reports—Duty to report.

.010 This section requires each judge, referee, hearing officer, probation officer, or other person responsible for the disposition of cases involving traffic offenses or civil violations committed by juveniles to report the offense or civil violation to the Department of Transportation.

In re Hillary C., 220 Ariz. 78, 210 P.3d 1249, ¶¶ 1-14 (Ct App. 2009) (juvenile was adjudicated delinquent of driving while having alcohol in system; court held trial court erred in concluding that it had discretion whether to report violation to ADOT, noting that A.R.S. §§ 28-3305(B) and 28-1559(B) & (H) require trial court to forward record of conviction to ADOT, and that § 28-1559(J) makes failure, refusal, or neglect of judicial officer to comply with § 28-1559 misconduct in office and grounds for removal from office).

§ 28-1559(J) Traffic case records; abstract of record; reports—Failure, refusal, or neglect to comply.

.010 This section provides that the failure, refusal, or neglect of a judicial officer to comply with § 28-1559 is misconduct in office and grounds for removal from office.

In re Hillary C., 220 Ariz. 78, 210 P.3d 1249, ¶ 13 & n.7 (Ct App. 2009) (juvenile was adjudicated delinquent of driving while having alcohol in system; court held juvenile judge erred in concluding that he had discretion whether to report violation to ADOT; court stated that, given complexity and variety of statutes involved, and parties' failure to direct juvenile judge to relevant statutes, court did not find or suggest that juvenile judge committed any misconduct in erroneously failing to notify Department of Transportation of juvenile's adjudication).

28-3305(A) Court action on conviction—Duty to report.

.010 Subsection (A)(3) requires a court to forward to the Department of Transportation a record of the conviction or judgment if the person is convicted of an offense for which revocation of the driver's license is mandatory.

In re Martin M., 223 Ariz. 244, 221 P.3d 1058, ¶¶ 8-14 (Ct. App. 2009) (juvenile was convicted of possession of marijuana; because this offense was not offense for which license revocation was mandatory under § 28-3304, trial court was not required to notify ADOT of conviction, thus trial court had discretion whether to report conviction to ADOT).

28-3305(B) Court action on conviction—Duty to report.

.010 This section requires a "court with jurisdiction over motor vehicle offenses or civil traffic violations committed under [Chapter 8 (§§ 28-3001 to -3515)], any other law of this state or a municipal ordinance regulating the operation of motor vehicles on highways" to forward to Department of Transportation a record of the conviction of or judgment against the person.

In re Hillary C., 220 Ariz. 78, 210 P.3d 1249, ¶¶ 1-14 (Ct App. 2009) (juvenile was adjudicated delinquent of driving while having alcohol in system; court held trial court erred in concluding that it had discretion whether to report violation to ADOT, noting that A.R.S. §§ 28-3305(B) and 28-1559(B) & (H) require trial court to forward record of conviction to ADOT, and that § 28-1559(J) makes failure, refusal, or neglect of judicial officer to comply with § 28-1559 misconduct in office and grounds for removal from office).

28-3320(A) Suspension of license for persons under 18 years of age; notice; definition—Suspension for various offenses.

.010 This section requires the Department of Transportation to suspend the license of a juvenile convicted of certain drug, alcohol, DUI, graffiti, and motor vehicle offenses.

In re Martin M., 223 Ariz. 244, 221 P.3d 1058, ¶¶ 4-14 (Ct. App. 2009) (juvenile was convicted of possession of marijuana; although this offense was one of ones listed in § 28-3320, that statute did not require trial court to notify ADOT of conviction, thus trial court had discretion whether to report conviction to ADOT).

In re Hillary C., 220 Ariz. 78, 210 P.3d 1249, ¶¶ 1-14 (Ct App. 2009) (juvenile was adjudicated delinquent of driving while having alcohol in system; court held trial court erred in concluding that it had discretion whether to report violation to ADOT, noting that A.R.S. §§ 28-3305(B) and 28-1559(B) & (H) require trial court to forward record of conviction to ADOT, and that § 28-1559(J) makes failure, refusal, or neglect of judicial officer to comply with § 28-1559 misconduct in office and grounds for removal from office).

41-1493.01 Free exercise of religion protected.

.010 A party who raises a religious exercise claim or defense under Arizona's Free Exercise of Religion Act must establish three elements: (1) The person's action or refusal to act is motivated by a religious belief; (2) the person sincerely held the religious belief; and (3) the governmental action substantially burdens the exercise of religious beliefs.

State v. Hardesty, 222 Ariz. 363, 214 P.3d 1004, ¶¶ 10-11 (2009) (defendant was member of Church of Cognizance, for which marijuana is main religious sacrament and its use provides connection to divine mind and spiritual enlightenment; defendant contended statute prohibiting use of marijuana violated his right to religious freedom; state conceded defendant established all elements needed to establish religious exercise defense).

.020 Once a party establishes the elements needed to establish religious exercise defense, the burden shifts to the state to demonstrate that its action (1) furthers a compelling governmental interest and (2) is the least restrictive means of furthering that compelling governmental interest; the compelling interest/least restrictive means test is a question of law to be determined by the court and not a fact question to be decided by the jurors.

State v. Hardesty, 222 Ariz. 363, 214 P.3d 1004, ¶¶ 10-24 (2009) (defendant was member of Church of Cognizance, for which marijuana is main religious sacrament and its use provides connection to divine mind and spiritual enlightenment; defendant contended statute prohibiting use of marijuana violated his right to religious freedom; state conceded defendant established all elements needed to establish religious exercise defense; court noted other courts have consistently found government's interest in regulating marijuana to be compelling interest; court held that total ban on marijuana was only means available to further that compelling interest).

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